

P26748.A10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Docket No.: P26748

Carlos V. PERRY, Jr.

Confirmation No.: 3518

Serial No.: 10/776,282

Group Art Unit No: 1724

Filed: February 12, 2004

Examiner: Ivars Cintins

For: **RECIRCULATING FILTER**

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief-Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

This appeal is from the Examiner's final rejection of claims 24-30 as set forth in the Final Office Action of February 26, 2007. A Notice of Appeal, in response to the February 26, 2007 Final Office Action, was filed on May 29, 2007, and the instant Appeal Brief is being timely submitted within two months of the filing of a Notice of Appeal, i.e., by July 29, 2007.

Payment for the requisite fee under 37 C.F.R. 41.20(b)(2) in the amount of \$ 500.00 for the filing of the Appeal Brief is being filed concurrently herewith. No extensions of time are believed to be required. If for any reason a necessary fee is required for consideration of the instant paper, authorization is hereby given to charge the fee for the Appeal Brief and any necessary extension of time fees to Deposit Account No. 19-0089.

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(I) REAL PARTY IN INTEREST

The real party in interest is E-Z Set Tank Company by an assignment recorded in the U.S. Patent and Trademark Office on January 19, 2001 at Reel 011482 and Frame 0314 in US Patent No. 6,767,457.

(II) RELATED APPEALS AND INTERFERENCES

Appellant is in the process of filing an Appeal Brief in pending US Patent Application No. 10/892,323. US 10/892,323 is a continuation-in-part of the instant application. No other related appeals and/or interferences are pending.

(III) STATUS OF THE CLAIMS

Claims 24-30 are the only pending claims. Claims 24-30 stand finally rejected and are the subject of the instant Appeal.

(IV) STATUS OF THE AMENDMENTS

A Response under 37 C.F.R. § 1.116 was filed on May 3, 2007 requesting reconsideration of the finally rejected claims. An Advisory Action was issued on May 11, 2007 indicating that the Response was considered but did not place the application in condition for allowance. Appellant submits that no other amendments after final have been filed.

(V) SUMMARY OF THE CLAIMED SUBJECT MATTER

A. The Claimed Subject Matter

1. INDEPENDENT CLAIM 24

With reference to page 5, line 1 through page 8, line 2 of the instant application and to the figures, and by way of non-limiting example, the invention provides for an effluent recirculating

filter tank system adapted for use in a septic system (see page 5, lines 3-4), comprising a septic system tank (10) having a bottom and sides (see Fig. 5 and page 7, lines 13-15), and an inlet (10b) and outlet (See Fig. 5). An effluent distribution system comprises troughs (10a) forming channels integrally in at least the bottom and sides of the septic system tank (see page 7, lines 14-16). The channels include at least one bottom channel (see Fig. 5) being open to an inside of the septic system tank and spanning substantially between opposing ends of the septic system tank at the bottom (see Fig. 5) and additional channels (10a) intersecting the bottom channel.

2. INDEPENDENT CLAIM 28

With reference to page 5, line 1 through page 8, line 2 of the instant application and to the figures, and by way of non-limiting example, the invention provides for an effluent recirculating filter tank system adapted for use in a septic system (see page 5, lines 3-4), comprising a tank (10) having a bottom and sides (see Fig. 5 and page 7, lines 14-16), and an inlet (10b) and outlet (See Fig. 5). An effluent distribution system comprises troughs (10a) forming channels integrally in at least the bottom and sides of the tank (10) (see page 7, lines 14-16). The channels include at least one bottom channel (see Fig. 5) spanning substantially between opposing ends of the tank (10) at the bottom and additional channels (10a) intersecting the bottom channel. A sheet (18) is placed on the bottom of the tank (see page 7, lines 19-23). The sheet (18) includes perforations so that effluent can flow from a filter to the integral troughs (see page 7, lines 21-23).

3. INDEPENDENT CLAIM 30

With reference to page 5, line 1 through page 8, line 2 of the instant application and to the figures, and by way of non-limiting example, the invention provides for an effluent recirculating

filter tank system adapted for use in a septic system (see page 5, lines 3-4), comprising a septic system tank (10) having a bottom and sides (see Fig. 5 and page 7, lines 13-15), and an inlet (10b) and outlet (See Fig. 5). At least the bottom of the septic system tank comprises integrally formed troughs (10a) which open to an inside of the septic system tank (see page 7, lines 14-16 and Fig. 5). At least one of the integrally formed troughs of the bottom of the septic system tank spans the bottom of the septic system tank and extends between different sides of the septic system tank (see Fig. 5). At least one of the integrally formed trough spanning the bottom of the septic system tank has one end extending to a first side of the septic system tank containing the inlet (10b) and another end extending to a second side of the septic system tank containing the outlet (see Fig. 5). At least another of the integrally formed troughs (10a) intersects the integrally formed trough spanning the bottom of the septic system tank.

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(A) Whether claims 24-26 and 30 are improperly rejected under 35 U.S.C. § 102(b) as anticipated by US Patent No. 5,417,147 to ZIMMER et al.

(B) Whether claims 24-26, 29 and 30 are improperly rejected under 35 U.S.C. § 103(a) as unpatentable over ZIMMER in view of US Patent No. 6,280,614 to BERG et al.

(C) Whether claims 27 and 28 are improperly rejected under 35 U.S.C. § 103(a) as unpatentable over ZIMMER in view of US Patent No. 3,738,527 to TOWNSEND.

(D) Whether claims 27 and 28 are improperly rejected under 35 U.S.C. § 103(a) as unpatentable over ZIMMER in view of BERG and TOWNSEND.

(VII) ARGUMENT RE. PRIOR ART REJECTIONS

(A) The rejection of claims 24-26 and 30 under 35 U.S.C. § 102(b) as being anticipated by ZIMMER et al. is in error and should be reversed.

REJECTION OF INDEPENDENT CLAIM 24 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 24 under 35 U.S.C. § 102(b) as being anticipated by ZIMMER is in error and should be reversed.

The claimed invention is directed to an effluent recirculating filter tank system adapted for use in a septic system. The tank is a septic system tank that includes a bottom and sides, an inlet and outlet. An effluent distribution system includes troughs forming channels integrally in at least the bottom and sides of the tank. The channels include at least one bottom channel that opens out to an inside of the tank and that spans substantially between ends of the tank at the bottom, and that also includes additional channels intersecting the bottom channel.

Claim 24 specifically recites:

An effluent recirculating filter tank system adapted for use in a septic system (emphasis added).

Claim 24 also specifically recites:

... a septic system tank having a bottom and sides, and an inlet and outlet; at least one bottom channel being open to an inside of the tank and spanning substantially between opposing ends of the tank at the bottom and additional channels intersecting the bottom channel (emphasis added).

ZIMMER does not show or disclose these features. ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As is well known, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall

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and not on any of the side walls as recited in claim 24.

Appellant also disagrees with the Examiner's assertions that the claimed invention is not limited to a septic type arrangement. Claim 24 specifically and positively recites "an effluent recirculating filter tank system", "a septic system tank", and "an effluent distribution system". These features are fully and positively recited and are therefore limiting. As such, these features are not merely recited as intended use, and must be accorded patentable weight.

The Examiner also apparently believes that the language describing the tank as a septic tank and the distribution system as an effluent distribution system are merely functional or expressions of intended use. This is without merit. The claims do not merely recite, e.g., a tank for a septic system. Instead, the noted language recites a septic tank system and an effluent distribution system which clearly has specific meanings in the art and which clearly breath life and meaning into the claim and limits the structure of that article or apparatus and therefore must be given weight. See MPEP 2111.02.

Accordingly, as ZIMMER fails to disclose the combination of features recited in at least claim 24, this rejection should be reversed.

REJECTION OF INDEPENDENT CLAIM 30 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 30 under 35 U.S.C. § 102(b) as being anticipated by ZIMMER is in error and should be reversed.

As explained above, the claimed invention is directed to an effluent recirculating filter tank system adapted for use in a septic system. The tank is a septic system tank that includes a bottom and sides, an inlet and outlet. An effluent distribution system includes troughs forming

channels integrally in at least the bottom and sides of the tank. The channels include at least one bottom channel that opens out to an inside of the tank and that spans substantially between ends of the tank at the bottom, and that also includes additional channels intersecting the bottom channel.

Claim 30 specifically recites:

An effluent recirculating filter tank system adapted for use in a septic system (emphasis added).

Claim 30 also specifically recites:

... a septic system tank having a bottom and sides, and an inlet and an outlet;
at least the bottom of the tank comprising integrally formed troughs which
open to an inside of the tank;
at least one of the integrally formed troughs of the bottom of the tank
spanning the bottom of the tank and extending between different sides of
the tank.

ZIMMER does not show or disclose these features. As explained above, ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. Again, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank.

Appellant also disagrees with the Examiner’s assertions that the claimed invention is not limited to a septic type arrangement. Claim 30 specifically and positively recites “an effluent recirculating filter tank system” and “a septic system tank”. These features are fully and positively recited and are therefore limiting. As such, these features are not merely recited as intended use, and must be accorded patentable weight.

The Examiner also apparently believes that the language describing the tank as a septic tank is merely functional or an expression of intended use. This is without merit. The claims do not merely recite, e.g., a tank for a septic system. Instead, the noted language recites a septic system tank which clearly has specific meanings in the art and which clearly breathes life and meaning into the claim and limits the structure of that article or apparatus and therefore must be given weight. See MPEP 2111.02.

Accordingly, as ZIMMER fails to disclose the combination of features recited in at least claim 30, this rejection should be reversed.

REJECTION OF DEPENDENT CLAIM 25 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 25 under 35 U.S.C. § 102(b) as being anticipated by ZIMMER is in error and should be reversed.

Claim 25 depends from claim 24 and further recites:

that the septic system tank is made from one of precast concrete and a synthetic material.

ZIMMER does not disclose or suggest these features. As explained above, while it is true that ZIMMER teaches a storage tank, ZIMMER fails to disclose or suggest a septic system tank, much less, one which has an effluent distribution system. As such, ZIMMER simply cannot disclose or suggest that the septic system tank is made from one of precast concrete and a synthetic material.

Appellant emphasizes that ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent

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recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 24, from which claim 25 depends.

Accordingly, as ZIMMER fails to disclose the combination of features recited in at least claim 25, this rejection should be reversed.

REJECTION OF DEPENDENT CLAIM 26 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 26 under 35 U.S.C. § 102(b) as being anticipated by ZIMMER is in error and should be reversed.

Claim 26 depends from claim 24 and further recites:

that the septic system tank includes an inlet pipe which extends from an interior to an exterior of the septic system tank.

ZIMMER does not disclose or suggest these features. As explained above, while it is true that ZIMMER teaches a storage tank, ZIMMER fails to disclose or suggest a septic system tank, much less, one which has an effluent distribution system. As such, ZIMMER simply cannot disclose or suggest that the septic system tank includes an inlet pipe which extends from an interior to an exterior of the septic system tank.

Appellant emphasizes that ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows,

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wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 24, from which claim 26 depends.

Accordingly, as ZIMMER fails to disclose the combination of features recited in at least claim 26, this rejection should be reversed.

(B) The rejection of claims 24-26, 29 and 30 under 35 U.S.C. § 103(a) as unpatentable over ZIMMER in view of BERG et al. is in error and should be reversed.

REJECTION OF INDEPENDENT CLAIM 24 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 24 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER in view of BERG is in error and should be reversed.

The Examiner asserts that ZIMMER as modified by BERG discloses or suggests that the channels can be formed on the sides of the tank. Appellant disagrees with this basis of rejection.

As explained above, ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 24.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrate that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank, much less, troughs arranged on the side walls as recited in claim 24..

Appellant also submits that ZIMMER teaches away from its combination with BERG. ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7), i.e., drinking water. BERG relates to a septic system tank which stores wastewater. One of ordinary skill in the art simply would not look to the septic system art to modify a drinking water tank, or vice versa.

Appellant emphasizes that there is simply no logical basis for replacing the tank (or any features thereof) in BERG with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER does not teach side wall channels and specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in BERG (as suggested by the Examiner), the result would be a tank which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not wastewater. ZIMMER, in contrast to the invention and BERG, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, as ZIMMER and BERG fail to disclose or suggest the combination of features recited in at least claim 24, this rejection should be reversed.

REJECTION OF INDEPENDENT CLAIM 30 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 30 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER in view of BERG is in error and should be reversed.

The Examiner asserts that ZIMMER as modified by BERG discloses or suggests that the channels can be formed on the sides of the tank. Appellant disagrees with this basis of rejection.

As explained above, ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrate that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank.

Appellant also submits that ZIMMER teaches away from its combination with BERG. ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7), i.e., drinking water. BERG relates to a septic system tank which stores wastewater. One simply would not look to the septic system art to modify a drinking water tank.

Appellant emphasizes that there is simply no logical basis for replacing the tank (or any features thereof) in BERG with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in BERG (as suggested by the Examiner), the result would be a tank which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not wastewater. ZIMMER, in contrast to the invention and BERG, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, as ZIMMER and BERG fail to disclose or suggest the combination of features recited in at least claim 30, this rejection should be reversed.

REJECTION OF DEPENDENT CLAIM 25 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 25 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER in view of BERG is in error and should be reversed.

Claim 25 depends from claim 24 and further recites:

that the septic system tank is made from one of precast concrete and a synthetic material.

ZIMMER does not disclose or suggest these features. As explained above, while it is true that ZIMMER teaches a storage tank, ZIMMER fails to disclose or suggest a septic system tank, much less, one which has an effluent distribution system. As such, ZIMMER simply cannot disclose or suggest that the septic system tank is made from one of precast concrete and a

synthetic material.

Appellant emphasizes that ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 24, from which claim 25 depends.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrate that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank.

As explained above, there is simply no logical basis for replacing the tank (or any features thereof) in BERG with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in BERG (as suggested by the Examiner), the result would be a tank which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not wastewater. ZIMMER, in contrast

to the invention and BERG, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, as ZIMMER and BERG fail to disclose or suggest the combination of features recited in at least claim 25, this rejection should be reversed.

REJECTION OF DEPENDENT CLAIM 26 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 26 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER in view of BERG is in error and should be reversed.

Claim 26 depends from claim 24 and further recites:

that the septic system tank includes an inlet pipe which extends from an interior to an exterior of the septic system tank.

ZIMMER does not disclose or suggest these features. As explained above, while it is true that ZIMMER teaches a storage tank, ZIMMER fails to disclose or suggest a septic system tank, much less, one which has an effluent distribution system. As such, ZIMMER simply cannot disclose or suggest that the septic system tank includes an inlet pipe which extends from an interior to an exterior of the septic system tank.

Appellant emphasizes that ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of

the side walls as recited in claim 24, from which claim 26 depends.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrate that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank.

As explained above, there is simply no logical basis for replacing the tank (or any features thereof) in BERG with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in BERG (as suggested by the Examiner), the result would be a tank which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not wastewater. ZIMMER, in contrast to the invention and BERG, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, as ZIMMER and BERG fail to disclose or suggest the combination of features recited in at least claim 26, this rejection should be reversed.

REJECTION OF DEPENDENT CLAIM 29 UNDER 35 U.S.C. § 102 IS IN ERROR

The rejection of claim 29 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER in view of BERG is in error and should be reversed.

Claim 29 depends from claim 24 and further recites:

that the septic system tank further includes a flange and ribs.

ZIMMER does not disclose or suggest these features. As explained above, while it is true that ZIMMER teaches a storage tank, ZIMMER fails to disclose or suggest a septic system tank, much less, one which has an effluent distribution system. As such, ZIMMER simply cannot disclose or suggest that the septic system tank also includes a flange and ribs. Indeed, it is not apparent from the figures of ZIMMER that the disclosed tank has any flanges or ribs.

Appellant emphasizes that ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 24, from which claim 29 depends.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrate that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank.

Also, as explained above, there is simply no logical basis for replacing the tank (or any features thereof) in BERG with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER specifically relates to a carbonizing water tank

that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in BERG (as suggested by the Examiner), the result would be a tank which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not wastewater. ZIMMER, in contrast to the invention and BERG, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, as ZIMMER and BERG fail to disclose or suggest the combination of features recited in at least claim 29, this rejection should be reversed.

(C) The rejection of claims 27 and 28 under 35 U.S.C. § 103(a) as unpatentable over ZIMMER in view of TOWNSEND is in error and should be reversed.

REJECTION OF INDEPENDENT CLAIM 28 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 28 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER in view of TOWNSEND is in error and should be reversed.

The Examiner asserts that ZIMMER as modified by TOWNSEND discloses or suggests the recited protective sheet. Appellant disagrees with this basis of rejection.

Claim 28 specifically recites:

... an effluent distribution system comprising troughs forming channels integrally in at least the bottom and sides of the tank, the channels including at least one bottom channel spanning substantially between opposing ends of the tank at the bottom and additional channels intersecting the bottom channel; and a sheet placed on the bottom of the tank, wherein the sheet includes perforations so that effluent can flow from a filter to the integral troughs.

As explained above, ZIMMER relates to a tank for water carbonation for use in making

“soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER does not utilize an effluent distribution system. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 28.

TOWNSEND does not cure the deficiencies of ZIMMER. While it is apparent that TOWNSEND teaches a tank liner system, TOWNSEND does not disclose that the tank can include any troughs, much less, intersecting troughs. Nor has the Examiner identified any language in TOWNSEND which explains that the disclosed liner can be used on an effluent recirculating filter tank system adapted for use in a septic system. Furthermore, because the liner of TOWNSEND is impervious (see col. 2, lines 28-30), TOWNSEND teaches away from its combination with ZIMMER, i.e., the liner would block any flow into the troughs or channels.

Finally, Appellant submits the Examiner has failed to establish any proper basis for combining the teachings of these documents. Indeed, it is submitted that the above-noted differences between these documents actually teach away from their combination. For example, there is no logical basis for replacing the tank (or any features thereof) in TOWNSEND with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER does not teach side wall channels and specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in TOWNSEND (as suggested by the Examiner), the result would be a tank that lacks any troughs

or channels and which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not waste water. ZIMMER, in contrast to the invention, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, as ZIMMER and TOWNSEND fail to disclose or suggest the combination of features recited in at least claim 28, this rejection should be reversed.

REJECTION OF DEPENDENT CLAIM 27 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 27 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER in view of TOWNSEND is in error and should be reversed.

The Examiner asserts that ZIMMER as modified by TOWNSEND discloses or suggests the recited protective sheet. Appellant disagrees with this basis of rejection.

Claim 27 depends from claim 24 and further recites:

a sheet placed on one of the bottom and the sides of the septic system tank.

As explained above, ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 24.

TOWNSEND does not cure the deficiencies of ZIMMER. While it is apparent that TOWNSEND teaches a tank liner system, TOWNSEND does not disclose that the tank can include any troughs, much less, intersecting troughs. Nor has the Examiner identified any language in TOWNSEND which explains that the disclosed liner can be used on a septic system tank or on an effluent recirculating filter tank system adapted for use in a septic system. Furthermore, because the liner of TOWNSEND is impervious (see col. 2, lines 28-30), TOWNSEND teaches away from its combination with ZIMMER, i.e., the liner would block any flow into the troughs or channels.

Finally, the Examiner has failed to establish any proper basis or motivation for combining the teachings of these documents. Indeed, Appellant submits that the above-noted differences between these documents actually teach away from their combination. For example, there is no logical basis for replacing the tank (or any features thereof) in TOWNSEND with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER does not teach side wall channels and specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in TOWNSEND (as suggested by the Examiner), the result would be a tank that lacks any troughs or channels and which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not waste water. ZIMMER, in contrast to the invention, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, as ZIMMER and TOWNSEND fail to disclose or suggest the combination of features recited in at least claim 27, this rejection should be reversed.

(D) The rejection of claims 27 and 28 under 35 U.S.C. § 103(a) as unpatentable over ZIMMER and BERG in view of TOWNSEND is in error and should be reversed.

REJECTION OF INDEPENDENT CLAIM 28 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 28 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER and BERG in view of TOWNSEND is in error and should be reversed.

The Examiner asserts that ZIMMER and BERG as modified by TOWNSEND discloses or suggests the recited protective sheet. Appellant disagrees with this basis of rejection.

Claim 28 specifically recites:

... an effluent distribution system comprising troughs forming channels integrally in at least the bottom and sides of the tank, the channels including at least one bottom channel spanning substantially between opposing ends of the tank at the bottom and additional channels intersecting the bottom channel; and a sheet placed on the bottom of the tank, wherein the sheet includes perforations so that effluent can flow from a filter to the integral troughs.

As explained above, ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER does not utilize an effluent distribution system. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 28.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrate that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank.

As explained above, there is simply no logical basis for replacing the tank (or any features thereof) in BERG with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in BERG (as suggested by the Examiner), the result would be a tank which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not wastewater. ZIMMER, in contrast to the invention and BERG, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

TOWNSEND does not cure the deficiencies of ZIMMER and BERG. While it is apparent that TOWNSEND teaches a tank liner system, TOWNSEND does not disclose that the tank can include any troughs, much less, intersecting troughs. Nor has the Examiner identified any language in TOWNSEND which explains that the disclosed liner can be used on an effluent recirculating filter tank system adapted for use in a septic system. Furthermore, because the liner of TOWNSEND is impervious (see col. 2, lines 28-30), TOWNSEND teaches away from its

combination with ZIMMER and/or BERG, i.e., the liner would block any flow into the troughs or channels.

Finally, Appellant submits the Examiner has failed to establish any proper basis for combining the teachings of these documents. Indeed, it is submitted that the above-noted differences between these documents actually teach away from their combination. For example, there is no logical basis for replacing the tank (or any features thereof) in TOWNSEND with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER does not teach side wall channels and specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in TOWNSEND (as suggested by the Examiner), the result would be a tank that lacks any troughs or channels and which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not waste water. ZIMMER, in contrast to the invention, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, as ZIMMER and TOWNSEND fail to disclose or suggest the combination of features recited in at least claim 28, this rejection should be reversed.

REJECTION OF DEPENDENT CLAIM 27 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 27 under 35 U.S.C. § 103(a) as being unpatentable over ZIMMER in view of TOWNSEND is in error and should be reversed.

The Examiner asserts that ZIMMER as modified by TOWNSEND discloses or suggests

the recited protective sheet. Appellant disagrees with this basis of rejection.

Claim 27 depends from claim 24 and further recites:

a sheet placed on one of the bottom and the sides of the septic system tank.

As explained above, ZIMMER relates to a tank for water carbonation for use in making “soft drinks” (see col. 1, lines 4-7). ZIMMER, however, does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks and vice versa. Furthermore, the disclosed tank in ZIMMER is not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls as recited in claim 24.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrate that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank.

As explained above, there is simply no logical basis for replacing the tank (or any features thereof) in BERG with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in BERG (as suggested by the Examiner), the result would be a tank which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of

ZIMMER which treats water for human consumption and not wastewater. ZIMMER, in contrast to the invention and BERG, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

TOWNSEND does not cure the deficiencies of ZIMMER and BERG. While it is apparent that TOWNSEND teaches a tank liner system, TOWNSEND does not disclose that the tank can include any troughs, much less, intersecting troughs. Nor has the Examiner identified any language in TOWNSEND which explains that the disclosed liner can be used on an effluent recirculating filter tank system adapted for use in a septic system. Furthermore, because the liner of TOWNSEND is impervious (see col. 2, lines 28-30), TOWNSEND teaches away from its combination with ZIMMER and BERG, i.e., the liner would block any flow into the troughs or channels.

Finally, Appellant submits the Examiner has failed to establish any proper basis for combining the teachings of these documents. Indeed, it is submitted that the above-noted differences between these documents actually teach away from their combination. For example, there is no logical basis for replacing the tank (or any features thereof) in TOWNSEND with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER does not teach side wall channels and specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in TOWNSEND (as suggested by the Examiner), the result would be a tank that lacks any troughs or channels and which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human

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consumption and not waste water. ZIMMER, in contrast to the invention, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

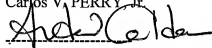
Accordingly, as ZIMMER and TOWNSEND fail to disclose or suggest the combination of features recited in at least claim 27, this rejection should be reversed.

CONCLUSION

Each of claims 24-30 are patentable under 35 U.S.C. §§ 102 and 103. Specifically, the applied art of record, even in properly combined, fails to disclose or suggest the unique combination of features recited in Appellant's claims 24-30. Accordingly, Appellant respectfully requests that the Board reverse the decision of the Examiner to reject claims 24-30 under 35 U.S.C. §§ 102 and 103, and remand the application to the Examiner for withdrawal of the above-noted rejections.

June 25, 2007
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Attachments: Claims Appendix, Evidence Appendix, and Related Proceedings Appendix

(VIII) CLAIMS ON APPEAL

24. An effluent recirculating filter tank system adapted for use in a septic system, comprising:
- a septic system tank having a bottom and sides, and an inlet and outlet; and
- an effluent distribution system comprising troughs forming channels integrally in at least the bottom and sides of the septic system tank, the channels including at least one bottom channel being open to an inside of the septic system tank and spanning substantially between opposing ends of the septic system tank at the bottom and additional channels intersecting the bottom channel.
25. The recirculating filter tank system of claim 24, wherein the septic system tank is made from one of precast concrete and a synthetic material.
26. The recirculating filter tank system of claim 24, wherein the septic system tank includes an inlet pipe which extends from an interior to an exterior of the septic system tank.
27. The recirculating filter tank system of claim 24, further comprising a sheet placed on one of the bottom and the sides of the septic system tank.

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28. An effluent recirculating filter tank system adapted for use in a septic system, comprising:

a tank having a bottom and sides, and an inlet and outlet;

an effluent distribution system comprising troughs forming channels integrally in at least the bottom and sides of the tank, the channels including at least one bottom channel spanning substantially between opposing ends of the tank at the bottom and additional channels intersecting the bottom channel; and

a sheet placed on the bottom of the tank,

wherein the sheet includes perforations so that effluent can flow from a filter to the integral troughs.

29. The recirculating filter tank system of claim 24, wherein the septic system tank further includes a flange and ribs.

30. An effluent recirculating filter tank system adapted for use in a septic system, comprising:

a septic system tank having a bottom and sides, and an inlet and an outlet;

at least the bottom of the septic system tank comprising integrally formed troughs which open to an inside of the septic system tank;

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at least one of the integrally formed troughs of the bottom of the septic system tank spanning the bottom of the septic system tank and extending between different sides of the septic system tank; and

at least one of:

said integrally formed trough spanning the bottom of the septic system tank having one end extending to a first side of the septic system tank containing the inlet and another end extending to a second side of the septic system tank containing the outlet; and

at least another of the integrally formed troughs intersecting said integrally formed trough spanning the bottom of the septic system tank.

(IX) EVIDENCE APPENDIX

This section lists evidence submitted pursuant to 35 C.F.R. §§1.130, 1.131, or 1.132, or any other evidence entered by the Examiner and relied upon by Appellant in this appeal, and provides for each piece of evidence a brief statement setting forth where in the record that evidence was entered by the Examiner. Copies of each piece of evidence are provided as required by 35 C.F.R. §41.37(c)(ix).

NO.	EVIDENCE	BRIEF STATEMENT SETTING FORTH WHERE IN THE RECORD THE EVIDENCE WAS ENTERED BY THE EXAMINER
1	N/A	N/A

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(X) RELATED PROCEEDINGS APPENDIX

Pursuant to 35 C.F.R. §41.37(c)(x), copies of the following decisions rendered by a court of the Board in any proceeding identified above under 35 C.F.R. §41.37(c)(1)(ii) are enclosed herewith.

NO.	TYPE OF PROCEEDING	REFERENCE NO.	DATE
1	N/A	N/A	N/A